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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**VIOLETTA HOANG, LIVIA HSIAO,
MICHAEL BLACKSBURG, and
MATTHEW HALL**, individually and on
behalf of a class of similarly situated
persons,

Plaintiffs,

vs.

REUNION.COM, INC., a California
corporation,

Defendant.

Case No. 08-CV-03518-MMC

**[PROPOSED] ORDER DENYING
DEFENDANT'S MOTION TO STRIKE
PLAINTIFFS' NOTICE AND FOR
INVOLUNTARY DISMISSAL
PURSUANT TO RULE 41(B)**

DATE: September 25, 2009
TIME: 9:00 a.m.
DEPT: Courtroom 7, 19th Floor
JUDGE: Hon. Maxine Chesney

1 Currently pending before the Court are Defendant Reunion.com, Inc.'s
 2 ("Reunion.com") motions to: (1) strike Plaintiffs' withdrawal of their Second Amended
 3 Complaint; (2) dismiss this action pursuant to Rule 41(b); and, (3) to back-date the
 4 proposed Rule 41(b) dismissal order, *nunc pro tunc*, to May 29, 2009. See Docket Nos.
 5 86 and 87.

6 Having considered all arguments made by both parties the Court hereby rules:

7 (1) The Defendant's motion to strike Plaintiffs' withdrawal of their Second
 8 Amended Complaint is hereby **DENIED** because Plaintiffs' withdrawal is
 9 permitted by the safe harbor provision of Rule 11(c) of the Federal Rules of
 10 Civil Procedure.

11 (2) The Defendant's motion to dismiss pursuant to Rule 41(b) is hereby **DENIED**
 12 because Defendant has failed to meet its burden that such a sanction is
 13 appropriate on the record here, and regardless, the motion is untimely in
 14 violation of Local Rule 7-8(c) as Defendants belatedly seek sanctions for
 15 conduct dating back to October of last year. Accordingly, Defendant's
 16 request that such an order be back-dated is also denied. Even if Rule 41(b)
 17 dismissal were appropriate, the law is clear that such dismissal orders may
 18 not be back-dated, *nunc pro tunc*, to deprive a party of its rights to appeal.
 19 *Chambers v. American Trans Air, Inc.*, 990 F.2d 317, 318 (7th Cir. 1993);
 20 *Transamerica Ins. Co. v. South*, 975 F.2d 321, 325-26 (7th Cir. 1992); *Reid v.*
 21 *White Motor Corp.*, 886 F.2d 1462 (6th Cir. 1989); *Singh v. Mukasey*, 533
 22 F.3d 1103, 1110 (9th Cir. 2008).

23 **IT IS SO ORDERED.**

24
 25 Dated: _____, 2009

ENTERED:

26
 27 By: _____
 28 THE HON. MAXINE M. CHESNEY
 UNITED STATES DISTRICT JUDGE